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Emergency or Public Necessity Rule(s) Filing Form

Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Mental Retardation Services
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Rule Type :

☐ Emergency Rule
☒ Public Necessity Rule

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Statement of Necessity:

Statement of Necessity Requiring Public Necessity Rules

This statement is made in accordance with §4-5-209(3) of the Tennessee Code Annotated and Rule 1360-1-2-.01(5)(c) of the Official Compilation Rules and Regulations of the State of Tennessee (O.C.R.R.S.T.). It is the finding by the Department of Finance and Administration, Division of Mental Retardation Services, that the foregoing rules of the Methodology Utilized to Determine Payments to Service Providers (Rate Structure) should be effective immediately based upon public necessity.

Pursuant to an agreement between the Division of Mental Retardation Services (Division) and the Bureau of TennCare, these agencies have worked extensively over the past several years to revise the ratemaking system currently in effect for community service providers under agreement with the Division. The result of this effort has been the development of a methodology for determining the funding mechanism/amounts to be paid to the Division's contractors who aid the mentally retarded in Tennessee.

The rates generated by this methodology are required as a condition of the Division's funding waivers from the Center for Medicaid/Medicare Services (CMS) and also to remain within its budgetary limitations under its Delegated Purchase Authority to secure procurement of services for those persons to whom DMRS provides supports and assistance. These waivers are the means by which the Division receives via the Federal Medicaid (TennCare) Program up to seventy percent (70%) of its monetary resources. The costs per-person, per-day are now running significantly above budgeted amounts for these services and the Division is seeking to control this fiscal problem in a responsible manner. Although, DMRS' Provider Agreement (contract) with its providers does

controlling under the circumstances in which the Division finds itself. Instead, DMRS *must* utilize the Reimbursement Rate for the HCBS and other Waivers as set forth by TennCare, the Lead Administrative Agency for federal Medicaid services in Tennessee. (Copy Attached) The rates provided for in this schedule are maximum rates, meaning that they are the ceiling or highest level of reimbursement permitted for DMRS' program services. Therefore, the Division believes that it has the authority to pay less than these amounts when necessary and is implementing these changes to specifically allow for such under its existing rate methodology rules. The amendments being proposed are required to successfully complete this process.

In addition, the Division's authorizations to pay for services under its Waivers are derived from the State of Tennessee's Delegated Purchase Authority No. DP – 08-20444-00. Sections 15 (a) & (e) of this document state as follows:

15. LIMITATIONS

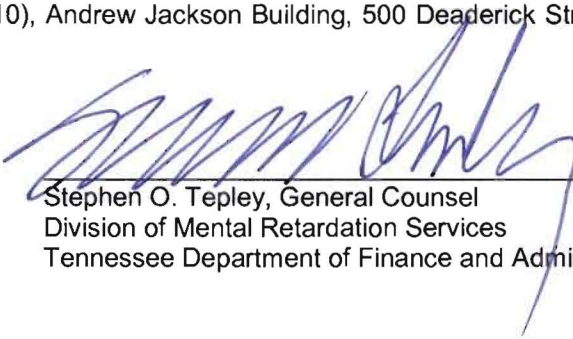
- (a) The state may NOT make any purchase that in any manner exceeds the terms, limitations and guidelines of this Delegated Purchase Authority.
- (b) Each purchase MUST be:
 - (1) within the scope and requirements of this Delegated Purchase Authority;
 - (2) budgeted and sufficient funds are available; (emphasis supplied) and
 - (3) consistent with state and program policy rules and regulations, including all applicable federal laws, rules, regulations and requirements.

Based upon the above, DMRS is making a concerted effort through adjustment of its rates of payment pursuant to its existing rules to modify the amounts paid to DMRS' Providers. The proposed amendments provide the needed changes and flexibility to complete this process. It is imperative that the Division brings its program expenditures back within its approved fiscal limits.

The delay in promulgating these rule amendments utilizing the ordinary rulemaking procedures as found in Title 4, Chapter 5 of the Tennessee Code Annotated, as well as Chapter 1360 of the O.C.R.R.S.T. could cause the loss of federal funding for these services. Furthermore, without the rates resulting from this process, the Division will incur a multi-million dollar deficit and thus face the reality of being unable to compensate its contracted providers. These persons and organizations furnish necessary - and in some cases critical services - to residents across the State of Tennessee who have needs for assistance due to mental retardation.

The Division of Mental Retardation Services will send a written notice to those persons it believes will be effected by these rules within ten (10) working days of the date their filing.

For a copy of this public necessity rule contact: Simone Cuarino, Legal Assistant, Division of Mental Retardation Services, Thirteenth Floor (Suite 1310), Andrew Jackson Building, 500 Deaderick Street, Nashville, Tennessee 37243, (615) 253-2025.



Stephen O. Tepley, General Counsel
Division of Mental Retardation Services
Tennessee Department of Finance and Administration

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0940-04-03	Methodology Utilized to Determine Payments to Service Providers (Rate Structure)
Rule Number	Rule Title
0940-04-03-.01	Purpose
0940-04-03-.02	Scope
0940-04-03-.03	Definitions Response Systems
0940-04-03-.04	Rate Setting Methodologies and Rates
0940-04-03-.05	Rate Setting Methodologies for Dental Services
0940-04-03-.06	Rate Setting Methodologies for Personal Response Systems
0940-04-03-.07	Rate Setting Methodologies for Vision Services
0940-04-03-.08	Rate Setting Methodologies for Independent Support Coordination Services
0940-04-03-.09	Rate Setting Methodologies for Services Funded Exclusively by the State [Non Waiver, State Funded (NWSF) Services]

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

RULES
OF
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
DIVISION OF MENTAL RETARDATION SERVICES

CHAPTER 0940-04-03

METHODOLOGY UTILIZED TO DETERMINE PAYMENTS
TO SERVICE PROVIDERS (RATE STRUCTURE)

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0940-04-03-.01 Purpose.

This chapter establishes a rate setting methodology for services that are provided through the Department of Finance and Administration – Division of Mental Retardation Services.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

0940-04-03-.02 Scope.

These rules apply to the procedures and practices used to establish rates of payment for services acquired by the Department of Finance and Administration – Division of Mental Retardation Services for or on behalf of those persons served by it under the provisions of Title 33 of the Tennessee Code Annotated and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23, dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively. All rates and amounts for payments established under these rules are subject to funding and resource availability in accordance with applicable Federal law and Title 33 of the *Tennessee Code Annotated*.

Authority: T.C.A. § 33-1-309(d), T.C.A. § 33-1-204, Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority(DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services.

Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

As used in these rules, unless the context indicates otherwise, the terms listed below have the following meaning:

- (1) "Administrative Costs" are the allowable percentage of the service rate that includes the costs for administrative salaries and benefits, home office costs, office supplies and printing, phone and other communication, travel and conference, advertising, professional services, licensure and dues, legal and accounting fees, interest, depreciation, occupancy, general liability insurance, equipment and administrative vehicles.
- (2) "Direct Service Costs" are the costs for direct service staff salaries and benefits, overtime, direct supervision wages and benefits, contracted direct service/temporary help, recruiting/advertising, drug testing, background checks, Hepatitis B and TB tests, and other costs for direct service staff bonuses and employee appreciation events.
- (3) "Non-Direct Program Costs" is the allowable percentage of the service rate that includes the costs for multi-site supervisors and benefits, training, off site computer/file storage, depreciation/amortization, internal monitoring, agency case management, personal funds management, healthcare oversight, specific assistance to individuals-room and board, specific assistance to individuals-non-room and board, transportation of individuals, staff travel, facility maintenance, facility supplies, habilitation supplies.
- (4) "Rate" is the amount paid per person to approved service providers for each unit of a DMRS service that is provided. A rate will be determined based on direct service costs, non-direct program costs, administrative costs, transportation and up to twenty (20) days of payment to cover service recipient absences. A unit may be a portion of an hour, an hour, a day, a month, an item or a job, depending on the type of service.
- (5) "Rate Levels" are the series of rates for residential and day services that are based on the intensity of a service recipient's needs and the size or site of the service setting.
- (6) "Rate Setting Methodology" is the manner in which the rates for services are calculated or determined under these rules.
- (7) "Special Needs Adjustment" is an additional payment that may be added to the residential rate for an individual when certain specified criteria are met.
- (8) "Uniform Cost Report" is a report relating to costs and/or operating expenses/revenues completed by providers that is submitted as required by the Division of Mental Retardation Services. The Uniform Cost Report is completed in the manner and in a format required by the Division.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

0940-04-03-.04 Rate Setting Methodologies and Rates

The following rates are formulated by taking into account administrative costs, direct service costs, non-direct program costs, transportation costs and up to twenty (20) days of payment to cover service recipient absences. The "maximum rate" listed below is amount that can be disbursed for a unit or service. Lesser amounts may be approved /paid when the usual, customary charge of the provider is less than the maximum rate. Also, the rate for any unit or service can be negotiated by the Division and the provider to a lower amount than the maximum rate.

(a) Medical Residential, Residential, Supported Living and Family Model Services.

(1) Medical Residential Service	Short Name	Maximum Rate
Med Res Level 5 Ind 24 Hour Rate	MR5 Ind 24	\$727.00
Med Res Level 5 – 2 Per 24 Hour Rate	MR5 - 2 24	\$546.61
Med Res Level 5 – 3 Per 24 Hour Rate	MR5 - 3 24	\$415.13
Med Res Level 5 – 4 Per 24 Hour Rate	MR5 - 4 24	\$304.35
Med SL Level 5 – IND 24 Hour Rate	MS5 – IND	\$727.00
Med SL Level 5 – 2 Per 24 Hour Rate	MS5 - 2 24	\$546.61
Med SL Level 5 – 3 Per 24 Hour Rate	MS5 - 3 24	\$415.13
(2) Residential Services	Short Name	Maximum Rate
Residential Level 1 - 2 People	RES1-2	\$115.50
Residential Level 1 - 3 People	RES1-3	\$80.75
Residential Level 1 - 4 People	RES1-4	\$62.25
Residential Level 1 - 5 TO 7 People	RES1-5/7	\$49.75
Residential Level 1 - 8+ People	RES1-8+	\$40.40
Residential Level 1 Shift- Individual	RES1-Ind	\$191.25
Residential Level 2 - 2 People	RES2-2	\$148.75
Residential Level 2 - 3 People	RES2-3	\$119.70
Residential Level 2 - 4 People	RES2-4	\$78.55
Residential Level 2 - 5 To 7 People	RES2-5/7	\$57.30
Residential Level 2 - 8+ People	RES2-8+	\$52.20
Residential Level 2 Shift – Individual	RES2-IND	\$267.00
Residential Level 3 - 2 People	RES3-2	\$241.55
Residential Level 3 - 3 People	RES3-3	\$169.10
Residential Level 3 - 4 People	RES3-4	\$95.40
Residential Level 3 - 5 To 7 People	RES3-5/7	\$71.85
Residential Level 3 - 8+ People	RES3-8+	\$60.60
Residential Level 3 - Shift – Individual	RES3-IND	\$303.00
Residential Level 4 - 2 People	RES4-2	\$294.35
Residential Level 4 - 3 People	RES4-3	\$247.35
Residential Level 4 - 4 People	RES4-4	\$189.10
Residential Level 4 - 5 To 7 People	RES4-5/7	\$120.05
Residential Level 4 - 8+ People	RES4-8+	\$98.75
Residential Level 4 – Individual	RES4-IND	\$484.20
Residential Level 6 - 2 People	RES6-2	\$387.65
Residential Level 6 – Individual	RES6-IND	\$775.25
(3) Supported Living Services	Short Name	Maximum Rate
Supported Living Level 1 - 2 People	SL1-2	\$115.50
Supported Living Level 1 - 3 People	SL1-3	\$80.75
Supported Living Level 1 – Individual/Companion	SL1-IND-CM	\$176.55
Supported Living Level 1 – Individual/Shift	SL1-IND-SH	\$191.25
Supported Living Level 2 - 2 People	SL2-2	\$148.75
Supported Living Level 2 - 3 People	SL2-3	\$119.70
Supported Living Level 2 – Individual/Companion	SL2-IND-CM	\$206.95
Supported Living Level 2 - Individual/Shift	SL2-IND-SH	\$267.00
Supported Living Level 3 - 2 People	SL3-2	\$241.55
Supported Living Level 3 - 3 People	SL3-3	\$169.10
Supported Living Level 3 – Individual/Shift	SL3-IND-SH	\$303.00
Supported Living Level 4 - 2 People	SL4-2	\$294.35
Supported Living Level 4 - 3 People	SL4-3	\$247.35

	Supported Living Level 4 - Individual	SL4-IND	\$484.20
	Supported Living Level 6 - 2 People	SL6-2	\$387.65
	Supported Living Level 6 - Individual	SL6-IND	\$775.25
(4)	Family Model Services	Short Name	Maximum Rate
	Family Model Res 1	Fam 1	\$42.50
	Family Model Res 2	Fam 2	\$50.00
	Family Model Res 3	Fam 3	\$69.50
	Family Model Res 4	Fam 4	\$112.00
	Family Model Res 5	Fam 5	\$217.00
(b)	Day Services.	Short Name	Maximum Rate
	Comm. Based Day Services	CB DAY	\$59.40
	Comm. Based Day Services - Level 4	CB DAY-4	\$82.40
	Comm. Based Day Services - Level 6	CB DAY-6	\$128.20
	Facility Based Day Svs - Level 1	FB DAY-1	\$30.65
	Facility Based Day Svs - Level 2	FB DAY-2	\$38.45
	Facility Based Day Svs - Level 3	FB DAY-3	\$51.80
	Facility Based Day Svs - Level 4	FB DAY-4	\$65.00
	Facility Based Day Svs - Level 6	FB DAY-6	\$125.65
	Employment Supports Special Needs	EMP SN	\$107.60
	Employment Supports - Level 6	EMP-6	\$128.20
	Employment Supports - Individual Emp	EMP-INDIV	\$77.25
	Employment Supports - Group Emp	EMP-GROUP	\$44.45
(c)	Clinical Services.	Short Name	Maximum Rate
	Beh Analyst Avs: Assessment 1	BA ASMT1	\$18.69
	Beh Analyst Plan Dev & Trng 1	BA PDTR1	\$18.69
	BA Svs: Presentation at Meetings	BA PRES	\$18.69
	Behavior Specialist	BEH SPEC	\$6.69
	Behavior Analyst	BEH ANALYST	\$18.69
	Nursing Services By LPN	LPN	\$5.94
	Nursing Services By RN	RN	\$8.43
	Speech Lang Hearing 1	SLH1	\$17.25
	Speech Lang Hearing 2 - 46+	SLH2	\$23.00
	Speech Lang Hearing 3 - 76+	SLH3	\$26.00
	Speech Lang Hearing 1 Asmt	SLH1ASMT	\$276.00
	Speech Lang Hearing 2 Asmt - 46+	SLH2ASMT	\$367.08
	Speech Lang Hearing 3 Asmt - 76+	SLH3ASMT	\$412.62
	SLH 1 Equip Asmt Training	SLH1ETASMT	\$276.00
	SLH 2 Equip Asmt Training - 46+	SLH2ETASMT	\$367.08
	SLH 3 Equip Asmt Training - 76+	SLH3ETASMT	\$412.62
	SLH 1 Equipment Training	SLH1ET	\$17.25
	SLH 2 Equipment Training - 46+	SLH2ET	\$23.00
	SLH 3 Equipment Training - 76+	SLH3ET	\$26.00
	Occupational Therapy 1	OT1	\$18.00
	Occupational Therapy 2 - 46+	OT2	\$24.00
	Occupational Therapy 3 - 76+	OT3	\$27.00
	Occupational Therapy 1 Asmt	OT1ASMT	\$288.00
	Occupational Therapy 2 Asmt - 46+	OT2ASMT	\$383.04
	Occupational Therapy 3 Asmt - 76+	OT3ASMT	\$430.56

OT 1 Equip Assessment Training	OT1ETASMT	\$288.00
OT 2 Equip Assessment Training - 46+	OT2ETASMT	\$383.04
OT 3 Equip Assessment Training - 76+	OT3ETASMT	\$430.56
OT 1 Equip Training	OT1ET	\$18.00
OT 2 Equip Training - 46+	OT2ET	\$24.00
OT 3 Equip Training - 76+	OT3ET	\$27.00
Physical Therapy 1	PT1	\$18.75
Physical Therapy 2 - 46+	PT2	\$25.00
Physical Therapy 3 - 76+	PT3	\$28.00
Physical Therapy 1 Assessment	PT1ASMT	\$300.00
Physical Therapy 2 Assessment - 46+	PT2ASMT	\$399.00
Physical Therapy 3 Assessment - 76+	PT3ASMT	\$448.50
PT 1 Equip Assessment Training	PT1ETASMT	\$300.00
PT 2 Equip Assessment Training - 46+	PT2ETASMT	\$399.00
PT 3 Equip Assessment Training - 76+	PT3ETASMT	\$488.50
PT 1 Equip Training	PT1ET	\$18.75
PT 2 Equip Training - 46+	PT2ET	\$25.00
PT 3 Equip Training - 76+	PT3ET	\$28.00
Orientation & Mobility 1	OM1	\$16.25
Orientation & Mobility 2 - 46+	OM2	\$21.25
Orientation & Mobility 3 - 76+	OM3	\$24.25
Orient & Mobility 1 Assessment	OM1ASMT	\$260.00
Orient & Mobility 2 Assessment - 46+	OM2ASMT	\$340.00
Orient & Mobility 3 Assessment - 76+	OM3ASMT	\$388.00
Nutrition 1 Assessment	NUTR1ASMT	\$207.20
Nutrition 2 Assessment - 46+	NUTR2ASMT	\$275.57
Nutrition 3 Assessment - 76+	NUTR3ASMT	\$309.76
Nutrition 1	NUTR1	\$77.70
Nutrition 2 - 46+	NUTR2	\$128.98
Nutrition 3 - 76+	NUTR3	\$163.17
Psychological Evaluation	PSY EVAL	\$300.00
Psychiatric Diag Eval - Interactive	PSYCH EVL	\$500.00
Psychiatric Diag Interview Eval	PSYCH EVL	\$500.00
Individual Consultation	CONSULT	\$100.00

(d)	Respite and Personal Assistance Services.	Short Name	Maximum Rate
	Personal Assist Qtrhr - 2 Staff	PA QTH-2	\$6.63
	Personal Assist Qtrhr	PA QTRHR	\$3.69
	PA Daily Rate Sleep	PA Sleep	\$195.00
	PA Qtrhr Enhanced Level 4 Only	PA4-ENH	\$4.19
	Respite Level A - Over 8 Hours/Day	Respite A	\$63.50
	Respite Level B - Over 8 Hours/Day	Respite B	\$195.00
	Respite Level C - Over 8 Hours/Day	Respite C	\$231.00
	Respite D - Qtr Hr Up To 8hr/Day	Respite D	\$3.69
	Respite - Behavioral - 24 Hours	Respite-BH	\$490.00
	Individual Transportations Svs. (as needed)	TRANSP	\$7.07
(e)	Specialized Equipment and Supplies (Two Year Total)	Short Name	Maximum Amount
	Specialized Med Equip & Its Supplies	Med Equip	\$10,000
(f)	Environmental Modifications (Two Year Total).	Short Name	Maximum Amount
	Environmental Accessibility	Env. Access	\$15,000

(g)	Vehicle Modifications (Five Year Total).	Short Name	Maximum Amount
	Vehicle Modifications	VEH MODS	\$20,000
(h)	Independent Support Coordination Services.	Short Name	Maximum Rate
	Independent Support Coordination	ISC	\$231.00
	ICF/MR 180 Transition CM 1 Month	ICF180-1	\$231.00
	ICF/MR 180 Transition CM 2 Month	ICF180-2	\$462.00
	ICF/MR 180 Transition CM 3 Month	ICF180-3	\$693.00
	ICF/MR 180 Transition CM 4 Month	ICF180-4	\$924.00
	ICF/MR 180 Transition CM 5 Month	ICF180-5	\$1,155.00
	ICF/MR 180 Transition CM 6 Month	ICF180-6	\$1,386.00

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

0940-04-03.05 Rate Setting Methodologies for Dental Services.

Dental Services rates are those set by TennCare for reimbursement of Medicaid funded dental care.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

0940-04-03-.06 Rate Setting Methodologies for Personal Emergency Response Systems.

Rates paid are the usual and customary rates for installation and monitoring set by the company providing the service.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

0940-04-03-.07 Rate Setting Methodologies for Vision Services.

Rates paid are the usual and customary charges for examination and corrective lenses.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006.

0940-04-03-.08. Rate Setting Methodologies for Independent Support Coordination Services.

Current rates in this category are found at Rule 0940-04-03-.04 (h) and were derived after consideration of provider input as well as system service requirements. Future changes in amounts paid for this service will be made after consultation with stake-holders (e.g. Independent Support Coordinators, Independent Support Coordination Agencies/Organizations), review of similar services in other states, market conditions, system needs and DMRS funding/resource availability.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006. Proposed Amended Public necessity rules 0940-04-03-.01 through 0940-04-03-.16 filed October 31, 2008; effective through April 1, 2009.

0940-04-03-.09 Rate Setting Methodologies for Services Funded Exclusively by the State [Non-Waiver; State Funded (NWSF)] Services.

Rates paid are discretionary and based upon Service Recipient need and which will be limited by system and service requirements as well as funding and resource availability.

Authority: T.C.A. § 33-1-309(d), Executive Order Number 9 (February 7, 1996), Executive Order Number 10 (October 14, 1996), Executive Order 21 (July 29, 1999), and Executive Order 23 (October 19, 1999), State of Tennessee Federal Medicaid Waivers for provision of services to the mentally retarded, State of Tennessee Delegate Purchase Authority (DPA(S)) No. DP-08-20444-00 and any subsequent DPA(S) which authorizes funding/purchasing of services for persons with mental retardation by the Division of Mental Retardation Services. Administrative History: Public necessity rules 0940-04-03-.01 through 0940-04-03-.14 filed January 14, 2005; effective through June 28, 2005. Public necessity rules filed on January 14, 2005, expired June 29, 2005; chapter reverted to reserved status. Original rule filed October 20, 2005; effective January 3, 2006. Proposed Amended Public necessity rules 0940-04-03-.01 through 0940-04-03-.17 filed October 31, 2008; effective through April 1, 2009.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of emergency or public necessity rules, lawfully promulgated and adopted.



Date: 2/13/09

Signature: Stephen H. Norris

Name of Officer: Stephen H. Norris

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: 2/13/09

Notary Public Signature: Simone Guarino

My commission expires on: 2/14/09

All emergency or public necessity rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

2-19-09

Date

Department of State Use Only

Filed with the Department of State on: 02/24/09

Effective for: 165 *days

Effective through: 08/08/09

* Temporary rules may be effective for up to 165 days from the date of filing.

Tre Hargett
Tre Hargett
Secretary of State

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Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Regulatory Flexibility Economic Impact Statement Addendum

Regulatory Flexibility Act of 2007, Public Chapter 464 Economic Impact Statement

Tennessee Department of Finance and Administration Division of Mental Retardation Services

As part of the rulemaking process and pursuant to TCA 4-5-403, The Department of Finance and Administration, Division of Mental Retardation Services, has prepared an economic impact statement on small businesses as an addendum for the proposed public necessity rule change.

The economic impact statement includes the following: the type or types of small businesses and an estimate of the number of small businesses affected; the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Description of Proposed Rule

The Division of Mental Retardation Services has initiated amendments under the public necessity rule making process that will change its rate setting methodology as found at Rule 0940-4-3 of the *Uniform Compilation of the Rules and Regulations for the State of Tennessee* (Methodology Utilized to Determine Payments to Service Providers). These changes are necessary to bring the Division's expenses back within its budgetary guidelines and to reallocate the Division's resources so as to create incentives for larger, more cost efficient homes. The following rate changes are proposed: reduction of special needs adjustments for homes of 4 or less persons, reduction of levels 1-4 single person homes, reduction of levels 1-4 two-person homes, increase for homes of 5 or more people, increase for levels 1 and 3 three person homes, reduction for level 4 community based and facility based day services, reduction of developmental incentives, and reduction of independent support coordination reimbursements.

Economic Impact Statement

1. Types and estimate of the number of small businesses affected:

It is estimated that around 40 small businesses would be affected. These are limited to those who serve 10 individuals or less and whose sole function is to contract with DMRS to provide day or residential services to individuals with mental retardation. Most of the businesses potentially affected serve only 1 person. Also impacted are Independent Support

Coordination agencies whose sole income is from DMRS and who provide ISC services under contract to fewer than 1,100 individuals.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no changes in the reporting, recordkeeping and other administrative costs as the result of the proposed rule.

3. Probable effect on small businesses and consumers:

The rule adjusts reimbursement rates. There is a potential loss of income for businesses and a possible adjustment of home sizes for consumers.

4. Description of any less burdensome, less intrusive or less costly alternate methods of achieving the purpose and objectives of the proposed rule that may exist:

There is no alternative method to propose.

5. A comparison of the proposed rule with any federal or state counterparts:

There are no federal or state counterparts with the issues addressed by these proposed rules.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

Any exemption would require a change to the Medicaid reimbursement protocol through DMRS' Home and Community Based Waivers. The ability to secure needed approval from the Centers for Medicaid and Medicare Services and TennCare is doubtful.